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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,907	07/11/2001	Veronique Guillou	210231US0	7859
22850	7590	01/28/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			YU, GINA C	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/901,907	Applicant(s) GUILLOU ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of Amendment filed on November 4, 2003 and Declaration filed on December 8, 2003. Claims 1-25 are pending. Claim rejections made under 35 U.S.C. § 103 over Lukenbach 9US 6090773) in view of Derian et al. (US 6262130 b1), as indicated in the previous Office action dated June 4, 2003, are withdrawn and modified to meet the new claims added by applicants.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lukenbach (US 6090773) ("Lukenbach") in view of Derian et al. (US6262130 B1) ("Derian").

Lukenbach teaches a conditioning shampoo or body cleanser composition comprising cationic polymers, an amphoteric surfactant, anionic surfactant, and a nonionic surfactant. See col. 1, line 34 – col. 2, line 59. Amphoteric and anionic phosphate surfactants are disclosed in col. 6, line 56 – col. 10, line 46. The example formula in Table 7 comprises 3.6 % by weight of sodium lauroampho PG-acetate phosphate, acrylamidopropyltrimonium chloride acrylamide copolymer, acrylates/steareth-20 methacrylate copolymer, and polyquaternium-10. Decyl glucoside, a nonionic surfactant, is used in the amount 3.6 % by weight. See instant claims 5-12, 14. While the "foam height" of the prior art is not explicitly discussed, examiner takes the position that, a composition comprising the same foaming nonionic

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surfactant used in the instant invention would produce similar foaming property that is within obvious range of the instant claims. The reference teaches that polyquaternium-10 and polyquaternium-7 are preferred conditioning polymers. See col. 10, line 57 – col. 12, line 37; instant claims 13, 16, and 23. The formula also contains glycerin. See also col. 14, line 44 – col. 15, line 2; instant claim 17. The reference further teaches using thickening agents. See col. 14, lines 4 – 27; instant claim 18. The claimed method of using the composition is viewed an expected use of an obvious variation of the prior art. See instant claims 19-22.

While the Lukenbach invention employs cationic polymers containing saccharide such as polyquaternium-10 and guar hydroxypropyl trimonium chloride, the reference teaches that polyquaternium-7 or polyquaternium -6, (cationic polymers devoid of saccharide) are equivalency to these polymers. It is well settled in patent law that it is prima facie obvious to substitute equivalents known for the same purpose. See MPEP § 2144.06. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted polyquaternium 10 and guar hydroxypropyl trimonium chloride, with polyquaternium-7 and/or polyquaternium –6 because of the expectation of successfully producing a cleansing composition with similar conditioning effects.

The term “consisting essentially of” in instant claim 1 is treated same as “comprising” in absence of applicants’ showing that the presence of the unrecited components would materially alter the basic and novel characteristic of the claimed invention. See PPG Industries v. Guardian Industries, 156 F.3d 1351, 1355, 48

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U.S.P.Q. 2d 1351, 1355 (Fed. Cir. 1998). Claims 24 and 25 do not exclude other components present in the prior art, such as amphoteric surfactants.

Lukenbach generally teaches alkyl phosphate surfactants, disclosed in col. 10, lines 16 – 42. The reference fails to teach using the specific phosphate surfactants of the instant claims 4 and 16.

Derian teaches aqueous surfactants comprising alkyl phosphate ester salts useful in formulating flowable or pumpable transparent gels. See abstract; col. 1, line 19 – col. 2, line 55. Potassium salt of dodecyl phosphate is disclosed. See instant claims 4 and 16. The reference teaches that the alkyl phosphate ester salts are useful in cosmetic and personal care products because of their foaming properties, detergency, non-irritating properties, form density, stability and skin feel. The reference also teaches that the invention does not require the presence of such undesirable other surfactants or large amounts of co-solvents or alcohols or other additives. See col. 2, lines 26 – 36. The invention, which is pumpable and transparent, is also said to allow minimize the amount of co-solvents or other surfactants. See col. 3, line 10 – col. 4, line 44. Although both references are silent as to the measurement of the actual foam height of the inventions, examiner takes the position that, in view of the fact that prior art which meet the limitations of the instant claims, the claimed properties of the instant inventions may be due to the limitations not disclosed in the instant claims.

Given the general teaching of using phosphate surfactants in Lukenbach, it would have been obvious to one of ordinary skill in the art at the time the invention was made to look to the prior art such as Derian for specific phosphate surfactants. The

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motivation to have modified the Lukenbach composition by substituting the anionic surfactants with the phosphate surfactants of Derian would have been obvious to the skilled artisan because of the expectation of successfully producing a transparent cleansing composition with good foaming properties, detergency, non-irritating properties while minimizing the need of co-surfactants.

Response to Arguments

Applicant's arguments filed on November 4, 2003 have been considered but are unpersuasive. Applicants' declaration filed on December 8, 2003 has been fully considered, but does not place the application in allowable condition.

The recited components of the claimed surfactants and cationic polymers are well known in cosmetic cleansing art, as provided by Lukenbach and Derian. The prior arts also show that the compositions as claimed is also obvious combinations to a skilled artisan in the same art. The issue in this case is whether the routineer would have found the combination of at least one cationic polymers devoid of saccharide, at least one foaming nonionic surfactant, and at least one phosphate surfactants, which are all well known in the prior arts, nonobvious; and if not, is there a greater than expected results in the combination that would render the claimed invention patentable.

However, examiner views that the comparison does not adequately address the crucial issue in this case. In the declaration, applicants presented data which compares the applicant's invention from a comparison formulation. Applicants state that the only variable in the two compositions is that sodium lauryl ether sulfate is used in the comparison in place of phosphate surfactant. See Declaraion, par. 4. The comparison

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here does not address the needed criticality of using the cationic polymers devoid of saccharide and the mixture of the surfactants "consisting essentially of" phosphate surfactant and foaming nonionic surfactant. The rejection in this case is based on the notion that substituting one cationic polymers in Lukenbach with another also taught in the same reference would have been obvious to a routineer. The declaration does not address the criticality of using the cationic polymers devoid of saccharide, and does not show clear and convincing evidence that the present invention renders unexpected and surprising results.

Furthermore, while applicants state that the present invention provides smaller bubble size and higher foam density as shown in paragraph 5 and 6, examiner respectfully notes that it is already known in cosmetic cleansing art that alkyl phosphate ester salts such as potassium salt of dodecyl phosphate produces excellent foaming property, stability, and foam density. While applicant simply dismiss the teachings of Derian in the rebuttal arguments, examiner views that a skilled artisan would have considered the properties of the present invention (smaller bubble size, high foam density) the expected results of a composition comprising the phosphate surfactant.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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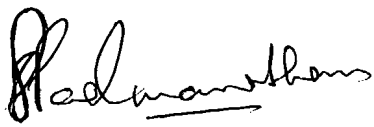
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
January 25, 2004


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

1/26/04